

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 15, 2007 Session

DARRELL HONEYCUTT v. DEBBIE ANN HONEYCUTT, ET AL.

**Appeal from the Chancery Court for Anderson County
No. 05CH5504 William Lantrip, Chancellor**

Filed June 27, 2007

No. E2006-1460-COA-R3-CV

After approximately five years of marriage, Darrell Honeycutt (“Husband”) sued Debbie Ann Honeycutt¹ (“Wife”) for divorce. The case was tried and the Trial Court entered a Judgment of Divorce, *inter alia*, awarding the parties a divorce, incorporating the parties’ Marital Dissolution Agreement, and reserving several issues including ones involving the distribution of specific items of real and personal property. After a further hearing, the Trial Court entered an order finding and holding that the couple’s six breeding dogs had a value of \$30,000; a Toyota RAV4 (“the Toyota”) had a value of \$18,000; Husband was to be awarded the breeding dogs and the Toyota; and the marital residence was to be sold at public auction with Wife to receive the first \$48,000 from the sale. Husband appeals to this Court raising issues primarily regarding the valuation and distribution of the breeding dogs and the Toyota. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Johnny V. Dunaway, LaFollette, Tennessee for the Appellant, Darrell Honeycutt.

Patrick L. Looper, Knoxville, Tennessee for the Appellee, Debbie Ann Honeycutt.

¹Husband also named Devora Lovett as a party defendant claiming that Ms. Lovett might have an interest in real property in which Husband and Wife had an interest. The Trial Court dismissed the claims against Ms. Lovett in its Judgment of Divorce and Ms. Lovett is not involved in this appeal.

OPINION

Background

Husband and Wife were married in July of 2001² and separated in October of 2005. No minor children were born of this marriage. Husband sued Wife for divorce. The case was tried, and the Trial Court entered a Judgment of Divorce on March 31, 2006, *inter alia*, awarding the parties a divorce, incorporating the parties' Marital Dissolution Agreement, and reserving several issues including ones involving the distribution of the Toyota, the six breeding dogs, the household furnishings, and the marital residence. Trial was held on these remaining issues in May of 2006.

Husband testified that he is a utility engineer who maps "utility poles and underground." He travels a great deal for his work. During the marriage, Wife groomed a few dogs and sold some puppies, but Husband earned the majority of the income.

During the marriage, the parties owned two houses. At the time of the divorce, Husband lived in the house in Andersonville, Tennessee, which the parties used as the marital residence during the marriage. Wife was living in the other house. Husband waived his interest in the house that Wife was living in and, in return, Wife waived her interest in Husband's business.

Husband introduced an exhibit ("Exhibit 1") at trial showing, among other things, the values Husband placed on items of marital property. Exhibit 1 showed Husband's value for the Toyota of \$18,000. Husband then testified that the Toyota was worth \$18,000. Exhibit 1 further showed that the parties had six breeding dogs that were marital property with, according to Husband, a value of \$30,000. When asked about the dogs and their value, Husband testified there were six dogs, specifically, three Maltese, one Pomeranian, and two Bichons, and further testified:

Well one Maltese, I think, I gave five hundred for and the other two, a thousand apiece, and the Pomeranian, I think they were five hundred and one Bichon was five hundred and the other one was a puppy out of her litter that we kept, but if we had sold it, we would have got, you know, anywhere from five hundred to a thousand. See all these dogs have championship bloodline in them.

Husband has been involved in the breeding and selling of dogs "[a]ll my life." He testified that each of the six dogs is now a breeding dog and explained that "the value of a female is what you get off one litter of pups." Husband explained that the dogs are capable of having two litters per year of two to six pups and the market value of such puppies is five hundred to a thousand dollars apiece.

²The Marital Dissolution Agreement incorporated into the Judgment of Divorce states that the parties were married in July of 2001. Wife, however, testified that the parties were married in July of 2000. Whether the parties were married in 2000, or 2001, has no impact upon the issues on appeal.

At that point during Husband's proof, the Trial Court awarded Husband the dogs and assigned the dogs a value of \$30,000 stating:

THE COURT: Well, they are obviously of substantial value and he thinks they are worth this so without us having - - I don't have a dog expert. He has owned dogs and bred dogs all of his life. If he thinks they are worth thirty thousand dollars he can have them.

The Trial Court having awarded the dogs to Husband, Husband's attorney then asked Husband if he thought the dogs were worth \$30,000 and Husband testified: "You probably couldn't get that out of them....Well, if you wasn't a breeder you probably couldn't get more than five hundred to a thousand out of each one of them." Husband testified he does not have the time to be a breeder.

The Trial Court also awarded the Toyota to Husband and assigned the Toyota a value of \$18,000, after hearing Husband's testimony regarding its value. At the time of trial, Wife had possession of the dogs and the Toyota, and the Trial Court ordered her to give them to Husband.

Wife also testified at trial and introduced an exhibit ("Exhibit 4") showing, among other things, the values that she assigned to items of marital property. Exhibit 4 shows Wife's value for the six breeding dogs of \$1,900. No value is listed on Exhibit 4 for the Toyota. Wife did not testify further regarding the value of the breeding dogs or the Toyota.

The Trial Court entered an order on June 14, 2006, finding and holding, *inter alia*, that the six breeding dogs had a value of \$30,000 and were awarded to Husband; that the Toyota had a value of \$18,000 and was awarded to Husband; that the marital residence would be sold at public auction with Wife to receive the first \$48,000 of the proceeds; and that any proceeds from the sale of the house remaining after payment of the mortgage loan, income taxes, and real property taxes would be distributed one-half to Husband and one-half to Wife.

Husband filed a motion for new trial, which the Trial Court denied. Husband appeals to this Court.

Discussion

Although not stated exactly as such, Husband raises three issues on appeal: 1) whether the Trial Court erred in valuing and distributing certain items of marital property before all the proof had been presented; 2) whether the Trial Court erred in assigning the six dogs a value of \$30,000; and 3) whether the Trial Court erred in awarding Wife an offset of \$48,000 for her interest in the Toyota and the six dogs instead of an offset of \$24,000.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of

law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

We first consider whether the Trial Court erred in valuing and distributing certain items of marital property before all proof had been presented. In *Wallace v. Wallace*, this Court explained:

The value of marital property is a fact question. Thus, a trial court's decision with regard to the value of a marital asset will be given great weight on appeal. *See Edwards v. Edwards*, 501 S.W.2d 283, 288 (Tenn. Ct. App. 1973). In accordance with Tenn.R.App.P. 13(d), the trial court's decisions with regard to the valuation and distribution of marital property will be presumed to be correct unless the evidence preponderates otherwise. *See Hardin v. Hardin*, 689 S.W.2d 152, 154 (Tenn. Ct. App. 1983).

The value of a marital asset is determined by considering all relevant evidence regarding value. *In re Marriage of Rosen*, 126 Ill. App.3d 766, 81 Ill. Dec. 840, 846-47, 467 N.E.2d 962, 968-69 (1984) and 27C C.J.S. *Divorce* §§ 566 & 569 (1986). The burden is on the parties to produce competent evidence of value, and the parties are bound by the evidence they present. *In re Marriage of Deem*, 123 Ill. App.3d 1019, 79 Ill. Dec. 542, 546, 463 N.E.2d 1317, 1321 (1984); *In re Marriage of Larkin*, 462 N.E.2d 1338, 1344 (Ind. Ct. App. 1984); and *Martin v. Martin*, 358 N.W.2d 793, 798 (S.D. 1984). Thus the trial court, in its discretion, is free to place a value on a marital asset that is within the range of the evidence submitted. *In re Marriage of Johnston*, Mont. 726 P.2d 322, 325 (1986) and *Hein v. Hein*, 366 N.W.2d 646, 650 (Minn. App. 1985).

Wallace v. Wallace, 733 S.W.2d 102, 107 (Tenn. Ct. App. 1987).

Husband's brief on appeal argues:

if there is no evidence of value presented by either party, whether as to the entire marital estate as in *Bacigalupo*, or as to a specific marital asset or assets, such as the Nicholas Fund in *Blevins*, then a reviewing court cannot determine whether the division of marital property was equitable and the matter must be remanded to the trial court. Furthermore, if the trial court bases its division of marital property upon insufficient evidence, then, on appeal, the matter must be remanded to the trial court. *Davis v. Davis*, 2002 Tenn. App. LEXIS 732 (Tenn. Ct. App. Oct. 16, 2002); *Silvey v. Silvey*, 2002 Tenn. App. LEXIS 209 (Tenn. Ct. App. Mar. 22, 2002).

In *Bacigalupo*, this Court remanded to the trial court for a determination of the values of the parties' personal property due to the fact that the trial court divided those items "without taking any evidence of the values of such household items." *Bacigalupo v. Bacigalupo*, No. W2003-

01578-COA-R3-CV, 2004 Tenn. App. LEXIS 653, at *19 (Tenn. Ct. App. Oct. 4, 2004), *no appl. perm. appeal filed*.

In *Blevins*, the wife was the only party who proposed values for the marital property. *Blevins v. Blevins*, No. M2002-02583-COA-R3-CV, 2003 Tenn. App. LEXIS 923, at *8 (Tenn. Ct. App. Dec. 30, 2003), *appl. perm. appeal denied June 14, 2004*. The husband in *Blevins* “did not introduce evidence of values and did not dispute the values presented by Wife.” *Id.* On appeal, this Court vacated an award of property known as the Nicholas Fund and remanded to the trial court because neither the Statement of the Evidence on appeal nor the Final Decree of Divorce applied a value to the Nicholas Fund and this Court was unable to determine the effect that the value of the Nicholas Fund had on the overall equitable distribution. *Id.* at *10.

In *Davis v. Davis*, this Court found and held that the trial court had “either assigned values without sufficient evidence or assigned values outside of the range of the actual evidence offered.” *Davis v. Davis*, No. W2001-01748-COA-R3-CV, 2002 Tenn. App. LEXIS 732, at *10 (Tenn. Ct. App. Oct. 16, 2002), *no appl. perm. appeal filed*. In *Silvey v. Silvey*, this Court found and held that there was “insufficient proof in this record to support the Trial Court’s finding as to the value of the home ...” because “the only proof before the Trial Court was that husband purchased the home place for \$58,000.00, and that he spent approximately \$50,000.000 renovating the same, all of which was prior to the parties’ marriage.” *Silvey v. Silvey*, No. E2001-02007-COA-R3-CV, 2002 Tenn. App. LEXIS 209, at *3-4 (Tenn. Ct. App. March 22, 2002), *no appl. perm. appeal filed*. There was proof in *Silvey* that significant work had been done on the home and that the home “was a show place home for the Symphony Guild in 1979,” but insufficient proof to support a finding that the home was worth \$500,000 at the time of the marriage. *Id.* at **3-4.

In the case now before us, the Trial Court was presented with Husband’s evidence regarding the value of the dogs and the Toyota prior to assigning a value to these items. This is not a situation where the Trial Court was presented with no evidence of value. In addition, Wife was not precluded from presenting evidence as to the value of the dogs and the Toyota. In fact, Wife did introduce an exhibit at trial that assigned a value of \$1,900 to the breeding dogs. Wife could have chosen to present evidence regarding the value of the Toyota, but she did not do so and she is bound by the evidence, as is Husband, that was presented regarding the value of the Toyota. *See Wallace*, 733 S.W.2d at 107.

In essence, Husband argues that the Trial Court erred in accepting Husband’s evidence regarding the value of the dogs and the Toyota. Wife does not claim the Trial Court erred in accepting Husband’s values before her proof was presented. We find this issue to be without merit.

We next consider whether the Trial Court erred in assigning the six dogs a value of \$30,000. “[T]he trial court, in its discretion, is free to place a value on a marital asset that is within the range of the evidence submitted.” *Wallace*, 733 S.W.2d at 107.

Husband presented Exhibit 1 at trial, which assigned a value of \$30,000 to the six breeding dogs. Thus, \$30,000 was within the range of evidence submitted to the Trial Court as to the value of the breeding dogs. This issue is without merit.

Husband was allowed to present his evidence regarding the value of the Toyota and the dogs. The Trial Court accepted the values as presented by Husband. Wife does not object on appeal to the Trial Court's accepting Husband's evidence as to the value of these two marital assets.

Finally, we address whether the Trial Court erred in awarding Wife an offset of \$48,000 for her interest in the Toyota and the six dogs instead of an offset of \$24,000.

A trial court has wide discretion in dividing the interest of the parties in marital property. *Barnhill v. Barnhill*, 826 S.W.2d 443, 449 (Tenn. Ct. App. 1991). As noted by this Court in *King v. King*, when dividing marital property:

The trial court's goal in every divorce case is to divide the parties' marital estate in a just and equitable manner. The division of the estate is not rendered inequitable simply because it is not mathematically equal, *Cohen v. Cohen*, 937 S.W.2d 823, 832 (Tenn. 1996); *Ellis v. Ellis*, 748 S.W.2d 424, 427 (Tenn. 1988), or because each party did not receive a share of every item of marital property. *Brown v. Brown*, 913 S.W.2d [163] at 168. . . . In the final analysis, the justness of a particular division of the marital property and allocation of marital debt depends on its final results. *See Thompson v. Thompson*, 797 S.W.2d 599, 604 (Tenn. App. 1990).

King v. King, 986 S.W.2d 216, 219 (Tenn. Ct. App. 1998) (quoting *Roseberry v. Roseberry*, No. 03A01-9706-CH-00237, 1998 WL 47944, at *4, 1998 Tenn. App. LEXIS 100, at *11-12 (Tenn. Ct. App. Feb. 9, 1998), *no appl. perm. appeal filed*).

Morton v. Morton, 182 S.W.3d 821, 833-34 (Tenn. Ct. App. 2005).

When equitably dividing marital property, a trial court shall consider factors including, but not limited to:

- (1) The duration of the marriage;
- (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

- (3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;
- (4) The relative ability of each party for future acquisitions of capital assets and income;
- (5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;
- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
- (10) The amount of social security benefits available to each spouse; and
- (11) Such other factors as are necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-4-121(c) (2005).

As this Court stated in *Morton*:

It is not the role of this Court to tweak a trial court's distribution of property. Rather, we must look to determine if the overall property distribution is equitable. *King*, 986 S.W.2d at 219. Husband, as is often the case in appeals to this Court concerning a division of marital property, wishes to focus on whether the division as to particular assets was equitable rather than whether the overall property distribution was equitable. We decline to do so as the goal is an overall equitable marital property distribution.

Morton, 182 S.W.3d at 834.

Husband is asking this Court to tweak the Trial Court's distribution of marital property as to specific items. We decline to do so. A careful and thorough review of the record on appeal reveals that the evidence does not preponderate against the distribution of the marital property in this case being equitable. Basically, Husband argues that the value of Wife's interest in the six breeding dogs and the Toyota was only \$24,000 as she and Husband had an equal interest in these items. For this reason, Husband argues the "offset" awarded Wife should have been only \$24,000 and not \$48,000. Even assuming that Husband's underlying assumption is correct, which it is not, that he and Wife each necessarily were entitled exactly to one-half of the value of certain assets, Husband's math is wrong. The effect of what the Trial Court did was to do exactly what Husband claims should have been done as to the \$48,000 cash, which was to give Wife an offset against

Husband's share of \$24,000. In line with Husband's position, Wife's share of this \$48,000 was \$24,000 which means the Trial Court gave Wife an offset of only \$24,000 by awarding to her "Husband's share" of the \$48,000 just as Husband was awarded Wife's \$24,000 share of the dogs and the Toyota. Husband received the six breeding dogs and the Toyota valued by the Trial Court, in accordance with Husband's proof, at \$48,000. The Trial Court then awarded Wife the first \$48,000 from the proceeds of the marital home so that Husband and Wife each received marital assets worth \$48,000, with any equity in the remaining proceeds from the marital home being divided equally. From the proof before us, we cannot say that this division is not equitable. This being so, we find no error in the Trial Court's award to Wife of the first \$48,000 of the proceeds from the sale of the marital home.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Darrell Honeycutt, and his surety.

D. MICHAEL SWINEY, JUDGE